

Exhibit 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:)
)
)

CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
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REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
JENS BROCHNER
DATE: April 29, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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4 (Pages 10 to 13)

<p style="text-align: right;">Page 10</p> <p>1 THE COURT REPORTER: My name is</p> <p>2 Michael Friedman, a Certified Shorthand</p> <p>3 Reporter. This deposition is being held</p> <p>4 via videoconferencing equipment.</p> <p>5 The witness and reporter are not in</p> <p>6 the same room. The witness will be</p> <p>7 sworn in remotely pursuant to agreement</p> <p>8 of all parties. The parties stipulate</p> <p>9 that the testimony is being given as if</p> <p>10 the witness was sworn in person.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 12</p> <p>1 I N G E R G R E G E R S E N,</p> <p>2 Called as the official interpreter in</p> <p>3 this action, was duly sworn to faithfully translate</p> <p>4 the questions to the witness from English to Danish</p> <p>5 and the answers from Danish to English.</p> <p>6</p> <p>7</p> <p>8 J E N S B R O C H N E R,,</p> <p>9 called as a witness, having been first</p> <p>10 duly sworn according to law, testifies as follows:</p> <p>11</p> <p>12</p> <p>13 EXAMINATION BY MR. SCHOENFELD:</p> <p>14 Q Good morning, Mr. Brochner.</p> <p>15 Can you hear me okay?</p> <p>16 A Yes.</p> <p>17 Q Okay. Could you please state your</p> <p>18 full name for the record?</p> <p>19 A Jens. So the two middle names is</p> <p>20 C-H-I-S-T-I-A-N, and the next name is</p> <p>21 V-E-D-I-G-E, Brochner.</p> <p>22 Q Mr. Brochner, are you currently</p> <p>23 employed?</p> <p>24 A Yes. I'm employed as a secretary</p> <p>25 of the Danish Ministry of Taxation.</p>
<p style="text-align: right;">Page 11</p> <p>1 THE VIDEOGRAPHER: We are now on</p> <p>2 record. This is the remote video</p> <p>3 recorded deposition of Jens Brochner.</p> <p>4 Today is Thursday, April 29, 2021.</p> <p>5 The time is now 6:05 a.m. New York time.</p> <p>6 We are here in the matter of In Re,</p> <p>7 Customs and Tax Administration of the</p> <p>8 Kingdom of Denmark, et al. All counsel</p> <p>9 have been noted on record.</p> <p>10 My name is Jose Rivera, remote</p> <p>11 video technician, on behalf of Gregory</p> <p>12 Edwards LLC. At this time, will the</p> <p>13 reporter, Michael Friedman, on behalf of</p> <p>14 Gregory Edwards LLC, please swear in the</p> <p>15 interpreter and the witness.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 13</p> <p>1 Q For how long have you held that</p> <p>2 position?</p> <p>3 A So I've been employed by the</p> <p>4 ministry since May 2012.</p> <p>5 Q Have you been a permanent secretary</p> <p>6 since May of 2012?</p> <p>7 A Yes.</p> <p>8 Q Is that the only position you've</p> <p>9 held with the Ministry of Taxation in the</p> <p>10 time that you've worked there?</p> <p>11 A Yes, that's the only position I've</p> <p>12 had.</p> <p>13 Q Did you replace someone when you</p> <p>14 became permanent secretary in May of 2012?</p> <p>15 A I replaced Peter Loft who was the</p> <p>16 permanent secretary before me.</p> <p>17 Q Do you know for how long Peter Loft</p> <p>18 was permanent secretary before you?</p> <p>19 A No, I don't know exactly, but for</p> <p>20 many years.</p> <p>21 Q I'm sorry. Could you just repeat</p> <p>22 the last sentence?</p> <p>23 A No, I don't know, but I know that</p> <p>24 it was for many years.</p> <p>25 Q Okay. Thank you.</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 Q Did the analysis include any</p> <p>2 discussion of processes for handling dividend</p> <p>3 withholding tax refunds?</p> <p>4 A No, not as I remember it. No, not</p> <p>5 as I remember it.</p> <p>6 But the director area or entity of</p> <p>7 Accounting and/or Payments and Accounting</p> <p>8 also included refund -- refunds of dividend</p> <p>9 withholding tax.</p> <p>10 Q Did the Ministry of Taxation have</p> <p>11 an audit committee separate from SIR?</p> <p>12 A You have to be more specific about</p> <p>13 the period we're talking about.</p> <p>14 Q So let's start in January of 2012.</p> <p>15 In January of 2012, did the</p> <p>16 Ministry of Taxation have an audit committee</p> <p>17 separate from SIR?</p> <p>18 A There was an audit committee, and</p> <p>19 it was established because the department and</p> <p>20 agency were merged.</p> <p>21 Q When was the audit committee</p> <p>22 established?</p> <p>23 A It was before my time, presumably</p> <p>24 in 2009.</p> <p>25 Q Why do you say, "presumably in</p>	<p style="text-align: right;">Page 68</p> <p>1 the same way.</p> <p>2 Q In the time period when the audit</p> <p>3 committee existed, what were its functions?</p> <p>4 A It should review reports from SIR,</p> <p>5 as I understand it, and follow up on audits.</p> <p>6 Q Sorry? Follow up on what?</p> <p>7 A On audits.</p> <p>8 Q Were all SIR audits during this</p> <p>9 time period presented to the audit committee?</p> <p>10 MR. OXFORD: Objection to form.</p> <p>11 A I don't remember, but presumably</p> <p>12 based on risk and materiality.</p> <p>13 Q Who made the risk and materiality</p> <p>14 decision about which SIR reports would go to</p> <p>15 the audit committee?</p> <p>16 MR. OXFORD: Objection to form.</p> <p>17 A I presume that the audit manager</p> <p>18 did that.</p> <p>19 Q Was the audit manager -- are you</p> <p>20 referring, when you say "audit manager," to</p> <p>21 the head of SIR, or to someone on the audit</p> <p>22 committee?</p> <p>23 A I presume the head of SIR.</p> <p>24 Q During the time period that the</p> <p>25 audit committee existed while you were head</p>
<p style="text-align: right;">Page 67</p> <p>1 2009?"</p> <p>2 A I don't know. It's my best guess.</p> <p>3 Q Is that when the department and the</p> <p>4 agency were merged?</p> <p>5 A As I remember, the department and</p> <p>6 the agency were merged during the period from</p> <p>7 the end of 2009 until 2012, probably the end</p> <p>8 of 2012.</p> <p>9 Was that it? Yeah.</p> <p>10 Q And the audit committee was closed</p> <p>11 in 2013.</p> <p>12 Correct?</p> <p>13 MR. OXFORD: Objection to form.</p> <p>14 A It's correct, but it follows from</p> <p>15 the new structure. SIR became independent of</p> <p>16 SKAT and was organized in the department.</p> <p>17 You couldn't have arm's length in</p> <p>18 the period from 2010 to 2012, so you had to</p> <p>19 make this audit committee. And the National</p> <p>20 Audit Office criticized that structure that</p> <p>21 was in -- that existed in the period 2010 to</p> <p>22 2012.</p> <p>23 And I believe that the structure</p> <p>24 from 2013 and going forward was the right way</p> <p>25 to do it. And other ministries organized in</p>	<p style="text-align: right;">Page 69</p> <p>1 of department, who was on the audit</p> <p>2 committee?</p> <p>3 A The head of the audit committee was</p> <p>4 the secretary, the permanent secretary. So</p> <p>5 during the period when SKAT and the</p> <p>6 department were combined into one, the</p> <p>7 permanent secretary had several roles.</p> <p>8 He was, on the one hand, a</p> <p>9 permanent secretary. And at the same time,</p> <p>10 he was the CEO of SKAT, and also the chairman</p> <p>11 of the audit committee.</p> <p>12 And in that way, a mix of caps or</p> <p>13 of functions, you might say, you know,</p> <p>14 what -- the cap you have on your head. It's</p> <p>15 a mix of these and it's also not a clear</p> <p>16 structure.</p> <p>17 And that's why the structure was</p> <p>18 changed in -- on the first of January 2013 at</p> <p>19 the request of the then Minister of Taxation.</p> <p>20 Q So for the period May 2012 to</p> <p>21 January 1st of 2013, you were the head of the</p> <p>22 audit committee.</p> <p>23 Is that right?</p> <p>24 A Yes, that's correct.</p> <p>25 Q And during that time period, the</p>

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32 (Pages 122 to 125)

<p style="text-align: right;">Page 122</p> <p>1 August/September '15.</p> <p>2 Q When you reviewed the action plans</p> <p>3 or when they were presented to you after</p> <p>4 August of 2015, did you conclude that they</p> <p>5 were suitable in response to the risks</p> <p>6 identified in this report in 2013?</p> <p>7 A I noted and read the action plans</p> <p>8 and the responsible executive board of SKAT.</p> <p>9 They approved the action plans.</p> <p>10 Q I'm asking you a different</p> <p>11 question.</p> <p>12 You were made aware of this report</p> <p>13 in August or September of 2015.</p> <p>14 Correct?</p> <p>15 A Yes, it is correct.</p> <p>16 Q Did you read this report when it</p> <p>17 was presented to you?</p> <p>18 A Yes, in August/September 2015, yes.</p> <p>19 Q And when you read the report in</p> <p>20 August or September of 2015, did you</p> <p>21 understand the concerns that the report was</p> <p>22 providing notice of?</p> <p>23 A The report is difficult to read.</p> <p>24 It doesn't -- it's not -- it's not -- it's</p> <p>25 not critical, it's not a very critical report</p>	<p style="text-align: right;">Page 124</p> <p>1 National Audit Office shares this opinion</p> <p>2 because they also read the report.</p> <p>3 Q So let's look at some of the</p> <p>4 specific findings and recommendations of the</p> <p>5 report.</p> <p>6 So if you look at the table on</p> <p>7 Page 15, the second of these, labeled 3.7, it</p> <p>8 says that "an overall responsibility with</p> <p>9 executive focus should be established for the</p> <p>10 entire dividend tax process and processes."</p> <p>11 Is that right?</p> <p>12 A That's correct.</p> <p>13 Q And sitting here today, sitting</p> <p>14 here today, do you understand what that</p> <p>15 means?</p> <p>16 A I understand word-for-word what it</p> <p>17 means, but we have to remember that the</p> <p>18 administration of the tax area in Denmark is</p> <p>19 a complex administration where, for example,</p> <p>20 the management responsibility for support of</p> <p>21 systems can be in one place and business</p> <p>22 processes can be located elsewhere.</p> <p>23 Q And the recommendation here is to</p> <p>24 make sure that they're consolidated in one</p> <p>25 overall responsibility.</p>
<p style="text-align: right;">Page 123</p> <p>1 in its nature. It's in the nature of audit</p> <p>2 reports that --</p> <p>3 MR. SCHOENFELD: I apologize. We</p> <p>4 lost that entire answer. So let</p> <p>5 me -- let me ask the question again.</p> <p>6 Q When you read the report in August</p> <p>7 or September of 2015, did you understand the</p> <p>8 concerns that the report was sharing?</p> <p>9 Let's go off the record.</p> <p>10 THE VIDEOGRAPHER: Stand by. The</p> <p>11 time is 1:03 p.m. New York time and</p> <p>12 we're going off the record.</p> <p>13 (Brief recess taken.)</p> <p>14 THE VIDEOGRAPHER: Stand by. The</p> <p>15 time is 1:13 p.m. New York time and</p> <p>16 we're back on record.</p> <p>17 Q Mr. Brochner, when you read this</p> <p>18 report in August or September of 2015, did</p> <p>19 you understand the concerns the report was</p> <p>20 providing notice of?</p> <p>21 A I think, generally speaking, the</p> <p>22 report was difficult to read, and it's not</p> <p>23 seen in relation to that type of reports,</p> <p>24 particularly credit -- in order to report</p> <p>25 raising particular criticism. And the</p>	<p style="text-align: right;">Page 125</p> <p>1 Correct?</p> <p>2 A Yes, that's a recommendation of</p> <p>3 SIR. And then, the basis of the comments</p> <p>4 from SIR.</p> <p>5 And on the basis of the</p> <p>6 recommendations from SIR, the responsible</p> <p>7 director made action plans to reflect</p> <p>8 that -- those recommendations.</p> <p>9 Q The tax -- I apologize. Please go</p> <p>10 ahead.</p> <p>11 A When you have comments or</p> <p>12 observation points in SIR reports, it's the</p> <p>13 responsible management that has the</p> <p>14 obligation of the responsibility for reaction</p> <p>15 to them, and that was done.</p> <p>16 Q What was done in response to that</p> <p>17 recommendation?</p> <p>18 A I don't --</p> <p>19 THE INTERPRETER: I'm having</p> <p>20 Mr. Brochner repeat the answer.</p> <p>21 A So I know, as I said before, that</p> <p>22 an action plan was prepared to respond to</p> <p>23 that specific point of criticism. And this</p> <p>24 is the way these audit reports should be</p> <p>25 read.</p>

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33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 So the responsibility of management</p> <p>2 has to address the individual points of</p> <p>3 criticism, and not necessarily agree to every</p> <p>4 point.</p> <p>5 Q When you first read this report in</p> <p>6 September of 2015, did you inquire as to what</p> <p>7 steps were taken in May of 2013 to respond to</p> <p>8 SIR's criticism?</p> <p>9 A Yes, I did.</p> <p>10 Q Did you ask why those action plans</p> <p>11 were insufficient to prevent the fraud that</p> <p>12 was disclosed to you as of the summer of</p> <p>13 2015?</p> <p>14 MR. OXFORD: Objection to form.</p> <p>15 A I disagree on the grounds for the</p> <p>16 question. There's nowhere -- there's no</p> <p>17 place in this report where they mention</p> <p>18 fraud.</p> <p>19 Q The recommendation 3.4 on Page 15</p> <p>20 says that --</p> <p>21 MR. OXFORD: You interrupted his</p> <p>22 answer.</p> <p>23 MR. SCHOENFELD: I'm sorry?</p> <p>24 MR. OXFORD: He hasn't finished his</p> <p>25 answer. Please let him finish.</p>	<p style="text-align: right;">Page 128</p> <p>1 Is that right?</p> <p>2 A I don't understand what you are</p> <p>3 referring to. But on Page 6, the</p> <p>4 third-to-the-last paragraph --</p> <p>5 Q You testified -- go ahead.</p> <p>6 A It states clearly that it's the</p> <p>7 bank scheme that doesn't have sufficient</p> <p>8 control, and it was not on the bank scheme</p> <p>9 that there was fraud.</p> <p>10 Q The last item on the list in the</p> <p>11 table on Page 15 says that "the business</p> <p>12 procedures for payment of refunds should</p> <p>13 describe what needs to be verified before the</p> <p>14 request is met."</p> <p>15 Is that right?</p> <p>16 A That's correct. And it's a point</p> <p>17 of criticism with respect to lack of</p> <p>18 procedures or forms of procedure, but it's</p> <p>19 not critical. And I refer to the number "3"</p> <p>20 in the column regarding the materiality.</p> <p>21 Q Again, if you had received this</p> <p>22 report -- go ahead.</p> <p>23 A I'd like to comment that this</p> <p>24 report is not very critical of the</p> <p>25 procedures. There are many other audit</p>
<p style="text-align: right;">Page 127</p> <p>1 A So Item 3 states that "SKAT must</p> <p>2 take a better position or secure itself</p> <p>3 better to avoid incorrect payment or</p> <p>4 disbursement of dividend withholding tax."</p> <p>5 And that concern, specifically as</p> <p>6 it's stated on Page 6 of the report, it</p> <p>7 concerns that bank scheme, and not the</p> <p>8 so-called forms scheme. And the fraud took</p> <p>9 place on the forms scheme.</p> <p>10 Q And that distinction of the form</p> <p>11 scheme and the fraud scheme is in the basis</p> <p>12 of this report.</p> <p>13 Is that your testimony?</p> <p>14 A I'm sorry. I couldn't hear what</p> <p>15 you said.</p> <p>16 Q I said that that distinction</p> <p>17 between the form scheme and the bank scheme</p> <p>18 is clear from the face of this report.</p> <p>19 Is that your testimony?</p> <p>20 A It's not something that I say. It</p> <p>21 can be read from Page 6 of the report.</p> <p>22 Q So SIR's report is pretty clear.</p> <p>23 Correct?</p> <p>24 THE INTERPRETER: So what?</p> <p>25 Q SIR's report is pretty clear.</p>	<p style="text-align: right;">Page 129</p> <p>1 reports with recommendations.</p> <p>2 But the National Audit Office did</p> <p>3 not read it as a report with serious</p> <p>4 criticism and it doesn't say anything about</p> <p>5 fraud in the report.</p> <p>6 Q Mr. Brochner, where on Page 6 are</p> <p>7 you pointing for the fact that the criticism</p> <p>8 was leveled only with respect to the bank</p> <p>9 scheme and not the form scheme?</p> <p>10 MR. OXFORD: Objection. You can</p> <p>11 answer again.</p> <p>12 THE INTERPRETER: But he couldn't</p> <p>13 hear the question.</p> <p>14 MR. OXFORD: Alan, can you repeat</p> <p>15 the question, please?</p> <p>16 THE INTERPRETER: It was completely</p> <p>17 blurred.</p> <p>18 Q You reference Page 6 as the basis</p> <p>19 for your understanding that the -- you</p> <p>20 reference Page 6 as the basis for your</p> <p>21 understanding that the criticism we were</p> <p>22 reviewing refers only to the bank scheme and</p> <p>23 not the form scheme.</p> <p>24 Correct?</p> <p>25 A Yes, that's correct.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q Where exactly are you looking?</p> <p>2 A The third-to-the-last paragraph</p> <p>3 under the part, "Partial Conclusion." The</p> <p>4 second paragraph under that "Partial</p> <p>5 Conclusion."</p> <p>6 Q If you look at the second paragraph</p> <p>7 above the "Partial Conclusion," it refers to</p> <p>8 problems both with the form and the</p> <p>9 spreadsheet scheme.</p> <p>10 Correct?</p> <p>11 MR. OXFORD: Object to form.</p> <p>12 A That's not correct.</p> <p>13 Q Can you hear me?</p> <p>14 MR. OXFORD: Now, yes.</p> <p>15 MR. SCHOENFELD: Sorry.</p> <p>16 MR. OXFORD: We can hear you now.</p> <p>17 MR. SCHOENFELD: I just want to</p> <p>18 make sure.</p> <p>19 Q I asked you, if you looked at the</p> <p>20 second paragraph above the "Partial</p> <p>21 Conclusion," it refers to problems with both</p> <p>22 the form scheme and the spreadsheet scheme.</p> <p>23 Is that correct?</p> <p>24 MR. OXFORD: Can you read the</p> <p>25 question back?</p>	<p style="text-align: right;">Page 132</p> <p>1 Q And that references problems with</p> <p>2 both the form scheme and the bank scheme.</p> <p>3 Correct?</p> <p>4 A Yes, that's correct.</p> <p>5 Q Okay. And the National Audit</p> <p>6 Office also concluded that the 2013 SIR</p> <p>7 report referred to problems with both the</p> <p>8 form scheme and the bank scheme.</p> <p>9 Correct?</p> <p>10 MR. OXFORD: Object. Object to the</p> <p>11 form.</p> <p>12 A I don't think the national office</p> <p>13 sees this report as specifically critical of</p> <p>14 the system. In their report, this report is</p> <p>15 not mentioned as any of the main focused</p> <p>16 areas they have.</p> <p>17 That is not mentioned as a focus</p> <p>18 area in their conclusion or summary.</p> <p>19 Q Let's look at Exhibit 3008 in your</p> <p>20 binder.</p> <p>21 Have you seen this report before?</p> <p>22 A Yes, I have.</p> <p>23 Q This is a 2016 report from the</p> <p>24 National Audit Office.</p> <p>25 Correct?</p>
<p style="text-align: right;">Page 131</p> <p>1 (Whereupon the record was read back</p> <p>2 by the reporter.)</p> <p>3 MR. OXFORD: Let's go off the</p> <p>4 record for a moment.</p> <p>5 THE VIDEOGRAPHER: Stand by. The</p> <p>6 time is 1:33 p.m. New York time and</p> <p>7 we're going off the record.</p> <p>8 (Whereupon a discussion was held</p> <p>9 off the record.)</p> <p>10 THE VIDEOGRAPHER: Stand by. The</p> <p>11 time is 19 -- excuse me, 1:49 p.m.</p> <p>12 New York time and we're back on record.</p> <p>13 Q Mr. Brochner, we were on Page 6 of</p> <p>14 Exhibit 3009, the 2015 -- sorry -- 2013 SIR</p> <p>15 report.</p> <p>16 Correct?</p> <p>17 A Yes, that's correct.</p> <p>18 Q Do you see the paragraph beginning</p> <p>19 "Eliver," E-L-I-V-E-R?</p> <p>20 A Yes, I can.</p> <p>21 Q Do you see the sentence beginning</p> <p>22 "Menda," M-E-N-D-A?</p> <p>23 THE INTERPRETER: The sentence or</p> <p>24 the -- the sentence M-E-N-D-A?</p> <p>25 A Yes, I have that sentence.</p>	<p style="text-align: right;">Page 133</p> <p>1 A Yes, that's correct. It's a report</p> <p>2 they made after the fraud was detected.</p> <p>3 Q And the report entails a review,</p> <p>4 indications of the fraud, prior to its</p> <p>5 detection in 2015.</p> <p>6 Correct?</p> <p>7 MR. OXFORD: Objection to the form.</p> <p>8 THE INTERPRETER: Could you please</p> <p>9 repeat the question? I couldn't hear it</p> <p>10 all.</p> <p>11 Q Sure. The report entails a review</p> <p>12 of indications of the fraud prior to its</p> <p>13 detection in 2015.</p> <p>14 Correct?</p> <p>15 A That's rationalization in</p> <p>16 hindsight. The report was issued after the</p> <p>17 fraud was detected.</p> <p>18 The National Audit Office's reading</p> <p>19 of the 2013 report is the same as my reading,</p> <p>20 not a particularly critical report, not</p> <p>21 pleading particular criticism.</p> <p>22 Q Well, you concluded that the 2013</p> <p>23 report was about the bank program and not the</p> <p>24 form program.</p> <p>25 Correct?</p>